

JOINT LEGISLATIVE TASK FORCE ON ENERGY FACILITY SITING

Notes from the First Round of Work Group Meetings
Held September 12 and 13, 2000
in Senate Hearing Room 4, Olympia

BACKGROUND

At the first meeting of the Task Force, held August 24, the members established three work groups. The purpose of the work groups is to review issues and make recommendations to the Task Force. The “A” Work Group, which is reviewing the “What?” questions, will report to the Task Force on October 17 in Bellingham. The “B” Work Group, which is reviewing the “Who” questions, will report to the Task Force on October 24 in Olympia. And the “C” Work Group, which is reviewing the “How” questions, will report to the Task Force in Kennewick on November 13.

Anyone may participate in any of the work group meetings. If participants agree on a recommendation, they will forward the recommendation as one that has consensus. If participants disagree about how to solve an issue, they will explain the nature of the disagreement. Participants may also submit their separate views.

The list of issues in the budget proviso and the work group assignments are as follows:

- (a) Jurisdiction and membership of the state siting authority: The “A” Work Group (looking at the What? questions) will review jurisdiction; the “B” Work Group (looking at the Who? questions) will review membership.
- (b) Procedures: Work Group “C” (looking at the “nuts and bolts” or How? questions.)
- (c) The scope of preemption of proprietary and regulatory functions of local governments and other state agencies: A Group.
- (d) Local government participation: B Group.
- (e) The standards and processes for determining the need for proposed projects: A Group.
- (f) The role of a counsel for the environment: B Group.
- (g) Funding and related costs of participating in the state siting process: C Group.
- (h) Monitoring and oversight of certified facilities: A Group.
- (i) The siting of facilities on public lands: A Group.

MEETING NOTES

The meeting notes will show any progress made on reviewing issues and will record any recommendations, but will not attempt to capture the full extent of the conversation. The meeting notes were prepared by facilitator and legislative staff.

THE “A” OR “WHAT” WORK GROUP

The “A” or “What” Group met from 1:30 - 4:30 on Tuesday, September 12 in Olympia.
Attending were:

Margaret Allen, board member of Energy Northwest
Jim Arthur, Office of Community Development, facilitator
Chuck Blumenfeld, Perkins Coie LLP
William Bridges, Senate Energy, Technology and Telecommunications Committee
Chuck Carelli, Washington State Department of Ecology
Jim Chasey for Bill Kiel, Energy Northwest
Kathleen Collins, Pacific Corp
Maria Doss, Senate staff
Larry Farleigh, Washington Department of Parks and Recreation
Allen Fiksdal, manager of the Energy Facility Site Evaluation Council
Bill Frymire, Attorney General’s Office
Susan Harper, Fuel Safe Washington
Nancy Hirsch, Northwest Energy Coalition
Carol Jolly, Office of Financial Management, Executive Policy Office
Dick Little, City of Bellingham
Scott MacColl, staff, House Technology, Telecommunications, and Energy Committee
Patty McDonald, City of Auburn
Karen McGaffey, Perkins Coie
David Mudd, Washington Department of Fish and Wildlife
Claudia Newman, Bricklin and Gendler, LLP, and Fuel Safe Washington
Arne Olson, Energy Policy, Office of Trade and Economic Development
Terry Oxely, Puget Sound Energy
Carole Richmond, House Agriculture and Ecology Committee
Richard Rodger, Senate Environmental Quality and Water Resources Committee
Gayle Rothrock, Natural Resources
Collins Sprague, Avista Corp.
Mike Tracy, Puget Sound Energy
J. Vander Stoep, Chehalis
Donna Velej, House staff

1. Participants agreed that the state should have a role in the siting of energy facilities, that there should be some sort of state siting authority.
2. Participants listed criteria or statements that would describe a state siting process. This is a list for future discussion; participants have not yet discussed each item on the list sufficiently to determine the level of support for each. Indeed, some remarks were stated as questions. The following were written on tear sheets:

-The state has a role in the siting of energy facilities of statewide significance. (“Statewide significance” was not defined.)

-One function of a state siting authority is to coordinate state regulatory roles (one-stop shopping); another function is to perform siting.

- What constitutes a needed energy facility?
- What type of facility should the siting authority have jurisdiction over? What size?
- The siting authority should have jurisdiction over energy facilities that affect multiple jurisdictions, that cross government boundaries.
- Alternative energy sources
- A siting process should be equitable to local interests.
- A siting process should be efficient.
- A siting process should have predictable timelines.
- What should be the extent of preemption?
- A siting process should respond to economic need.
- A siting process should consider resource impacts (air, water, etc.).
- A siting process should result in projects that maximize efficiency of energy production and minimize environmental impacts.

3. Other statements or questions recorded by notetakers, but not on tearsheet, that might be useful for future discussion:

- What is the state energy policy and what is its connection with siting?
- The current statute is ambiguous. A state siting process, whatever its form, should be clear.
- Should the state siting authority be a siting entity or a policy entity?
- A fundamental role of a state siting authority is looking at the state's interest.
- A state siting authority should not be in a position of choosing among projects.
- Is there a need for more development of an energy policy in the state? What should be the connection between the state energy policy and a siting authority?
- Should the statute presume need?
- Should the process have an "opt-in" provision? In other words, should it set a threshold and then allow projects below that threshold to use the process if they prefer? This idea was also suggested for local governments: For projects below the threshold for automatic inclusion under the state process could a local government decide to have the project go through the state process?

THE “B” OR WHO WORK GROUP

The “B” or “Who” Work Group met from 9:00 - 12:00 on Wednesday, September 13 in Olympia. Attending were:

Margaret Allen, board member of Energy Northwest
Jim Arthur, Office of Community Development, facilitator
Heather Ballash, Office of Community Development
William Bridges, Senate Energy, Technology and Telecommunications Committee
Chuck Carelli, Washington State Department of Ecology
Kent Caputo, Miller Nash, LLP, for Duke Energy
Jim Chasey for Bill Kiel, Energy Northwest
Kathleen Collins, Pacific Corp
Maria Doss, Senate staff
Allen Fiksdal, manager of the Energy Facility Site Evaluation Council
Bill Frymire, Attorney General’s Office
Susan Harper, Fuel Safe Washington
Jerry Henry, Puget Sound Energy
Carol Jolly, Office of Financial Management, Executive Policy Office
Scott MacColl, staff, House Technology, Telecommunications, and Energy Committee
Patty McDonald, City of Auburn
David Mudd, Washington Department of Fish and Wildlife
Claudia Newman, Bricklin and Gendler, LLP, and Fuel Safe Washington
Arne Olson, Energy Policy, Office of Trade and Economic Development
Terry Oxely, Puget Sound Energy
Carole Richmond, House Agriculture and Ecology Committee
Richard Rodger, Senate Environmental Quality and Water Resources Committee
Deborah Ross, Chair of EFSEC
Collins Sprague, Avista Corp.
Craig Ward, City of SeaTac
Rusty Fallis, Attorney General’s Office

1. The issue of membership: Based on the discussion, there would appear to be two basic types of membership on a state siting authority: representatives of state agencies or a body made up of stakeholders. There was considerable discussion about the problems with the current state agency membership. There were no strong points made in favor of agency membership.

-There were three ideas behind agency membership, none of which is now working as intended. First, it was thought that someone could speak for the agency, but the adjudicative process complicates that and the representatives cannot represent their agency. Second, it was expected that experts would be able to represent the agency, but directors are choosing to keep their experts for intervenor status, and because of adjudication, the representatives may not talk with the experts. Third, it was thought that there would be a high level of policy involvement, but in fact directors cannot devote the time to the process.

-EFSEC is taking considerable time away from representatives’ other responsibilities.

-Agencies are compensated for only some of the costs.

-Local membership on the council is valuable, but constituents may not talk with their representative because of adjudication. Furthermore, funding is difficult for local members.

2. Type of process: The problems noted with the present adjudicative process led participants to pose the alternative of an informal advisory body, whether comprised of agency representatives or stakeholders appointed by the governor.

3. Who makes the final decision? There was considerable discussion of the governor's present role as final decision maker and a wide range of opinions. The original intent was to introduce a political element. At present the governor can reject a project recommended by the council or send a project back to the council for further consideration. An alternative discussed would be to have the final decision made by a siting authority comprised of stakeholders appointed by the governor. If the process were not adjudicative, the political element would then come into play as the governor worked with cabinet agencies that participating in the siting process. A variation on this option would be for the council to make the final decision but discuss the decision with the governor before making it.

Other Topics for Further Discussion:

-Look at rule making procedures for a process that establishes a record, provides access to all parties, but is less formal than adjudication.

-Also look at Oregon model which seeks to resolve as many issues as possible and then only adjudicate the unresolved ones.

-Is energy different from other industrial uses?

-Is a political element needed in the siting process?

-Should a final decision be based on a record?

-There was interest in learning more about the Oregon model, with regard to membership, procedures and sequencing, and decision making.

THE “C” OR HOW WORK GROUP

The “C” or How Work Group met from 1:30 - 4:30 on Wednesday, September 13 in Olympia. Attending were:

Margaret Allen, board member of Energy Northwest
Jim Arthur, Office of Community Development, facilitator
Heather Ballash, Office of Community Development
William Bridges, Senate Energy, Technology and Telecommunications Committee
Chuck Carelli, Washington State Department of Ecology
Jim Chasey for Bill Kiel, Energy Northwest
Kathleen Collins, Pacific Corp
Maria Doss, Senate staff
Allen Fiksdal, manager of the Energy Facility Site Evaluation Council
Bill Frymire, Attorney General’s Office
Susan Harper, Fuel Safe Washington
Jerry Henry, Puget Sound Energy
Carol Jolly, Office of Financial Management, Executive Policy Office
Scott MacColl, staff, House Technology, Telecommunications, and Energy Committee
David Mudd, Washington Department of Fish and Wildlife
Claudia Newman, Bricklin and Gendler, LLP, and Fuel Safe Washington
Arne Olson, Energy Policy, Office of Trade and Economic Development
Terry Oxely, Puget Sound Energy
Carole Richmond, House Agriculture and Ecology Committee
Richard Rodger, Senate Environmental Quality and Water Resources Committee
Deborah Ross, Chair, EFSEC
Senator Dan Swecker
Collins Sprague, Avista Corp.
Craig Ward, City of SeaTac
Rusty Fallis, Attorney General’s Office

1. SEPA and land use consistency: Under the present process, local governments are required to determine consistency with comprehensive plans before an environmental impact statement is prepared. A suggestion posed was to do SEPA first.

2. One-stop permitting process:

Given federal requirements delegated to the state, it is becoming harder to have one-stop siting process.

3. Monitoring: There are many other examples that illustrate that EFSEC cannot conduct the monitoring function with their own staff.

QUESTION: How does Oregon handle monitoring after a site has been certified?

4. Jurisdiction: Might the state have a siting authority for all multi-jurisdictional projects, such as highways, pipelines, and transmission lines?

5. Growth Management Act: Staff will learn more about the “Project Review Process” which seeks to integrate The State Environmental Policy Act and the Growth Management Act.

6. Funding:

Other topics for further discussion:

-Does EFSEC currently have authority to issue a new water right?